

APPENDIX H
PAST PERFORMANCE EVALUATION GUIDANCE



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECC-C

09 SEP 1996

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMAND, DISTRICT
COMMAND, FIELD OPERATING ACTIVITY, AND LABORATORY COUNSEL

SUBJECT: CECC-C Bulletin No. 96-16, Using Past Performance as an Evaluation Factor in
Best Value Procurements

1. Background

"Settling for inexpensive mediocrity hardly seems in the taxpayers' best interest if an agency determines that it can get better overall value by doing business with a higher priced supplier with an excellent track record." Office of Federal Procurement Policy, A Guide to Best Practices for Past Performance (interim ed., May 1995).¹

Past performance has generally been factored into the Government's buying decision as a part of the contracting officer's responsibility determination. However, past performance records have become significantly more important since Congress passed the Federal Acquisition Streamlining Act (FASA), Pub. L. No. 103-355, § 1091 (1994).

FASA called for the issuance of regulations establishing:

- (1) Standards for evaluating past performance;
- (2) Policies for collecting and maintaining information; and
- (3) Policies for offerors' submission and agencies' consideration of relevant information on past performance.

In response to FASA, the Secretary of Defense and the Administrators of GSA and NASA issued Federal Acquisition Circular (FAC) Number 90-26, modifying the Federal Acquisition Regulations (FAR) parts 9, 15, and 42. The FAR now requires agencies to record

¹ The OFPP Guide serves as the basis for the guidance in this Bulletin. Copies of the Guide may be obtained from the Executive Office of the President's Publications Office by calling 202-395-7332 or writing the Office of Publications, 725 17th Street, N.W., Room 2200, New Executive Office Building, Washington, D.C. 20503. A hypertext version is available on the World Wide Web at <http://www-far.npr.gov/BestP/BestPract.html>.

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and maintain contractor performance information. FAR 42.1502. The FAR also requires past performance to be considered in connection with responsibility determinations. FAR 9.105-1(c). Finally, past performance will eventually be required as an evaluation factor in all Requests for Proposals (RFPs) exceeding \$100,000, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. FAR 15.605(b)(1).

2. Maintaining Past Performance Information

FASA states that agencies are required to prepare contractor performance evaluations according to the following schedule. FAR 42.1502(a). This does not include construction or architect-engineer contracts, which are governed by FAR Parts 36.201 and 36.604, respectively. FAR 42.1502(b).

Solicitation Value	Date
\$1,000,000 or greater	July 1, 1995
\$500,000 - \$1,000,000	July 1, 1996
\$100,000 - \$500,000	January 1, 1998

When the period of contract performance will exceed 18 months, interim evaluations are required on an annual basis. AFARS 42.1502(a)(ii). These interim evaluations shall be purged from past performance information files upon completion of the final contract evaluation. AFARS 42.1502(a)(ii). Final evaluations shall not be retained to provide source selection information for longer than three years after completion of contract performance. FAR 42.1503(e).

In the Corps of Engineers, the process of compiling and maintaining performance evaluations is governed by Engineer Regulation (ER). For service and supply contracts, performance reports are required for all contracts and delivery/task orders in excess of \$100,000. ER 715-1-19. Contractor performance information is maintained in the Service and Supply Contractor Appraisal Support System (SSCASS). Id.

The Corps maintains performance information for architect-engineer contracts in the Architect-Engineer Contract Administration Support System (ACASS). ER 715-1-8. Firms' SF 254s, contract award data, and performance evaluations are retained in the database for six years after the date of the Reviewing Official signature on final evaluation. Id.

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For **construction contracts**, the Corps keeps performance reports in the Construction Contract Administration Support System (CCASS). ER 415-1-17. Evaluations should be prepared using the SF 1420, Performance Evaluation (Construction Contracts). Id. These reports are required for each construction contract of: (i) \$100,000 or more; (ii) \$25,000 or more, if any element of performance is either unsatisfactory or outstanding; and (iii) \$10,000 or more, if the contract is terminated for default. Id. Interim evaluations are required when a contractor's performance has been generally unsatisfactory for any element for a period of three months or for any period that could affect overall contract performance. Id.; EFARS 36.201(a)(3)(A). Construction performance reports shall be retained for **at least six years** after the date of the report. FAR 36.201 (c).

3. Making Past Performance a Part of the RFP

Past performance is currently a required evaluation factor in all Requests for Proposals (RFPs) of \$1,000,000 or greater, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. FAR 15.605(b)(1). A proposed change to the DFARS decreases this threshold to \$100,000 on July 1, 1997. See 60 Fed. Reg. 57,691 (Nov. 17, 1995) (amending DFARS 215.605(b)(1)(ii)). Although the use of past performance will not be mandatory for solicitations of less than \$100,000, it will be encouraged by the DFARS. Id.

Evaluation Factor Versus Responsibility Criterion

An RFP should make it clear that past performance is being used as an evaluation factor rather than merely as a responsibility criterion. Past performance should be a significant enough factor that offerors will immediately recognize its importance. Additionally, the RFP should probably not integrate past performance into other factors, which would tend to lessen its impact and make evaluation more difficult.

"Best Value" Procurements

In "best value" procurements, it is best to avoid using past performance data as a "go" or "no go" decision or as a minimum mandatory requirement. Instead, past performance records should be compared to discriminate between otherwise acceptable offers. This will ensure that past performance will not be mistaken for a responsibility criterion. See AFARS 15.608(a)(2)(i). In contrast, a solicitation for the "lowest cost, technically acceptable" proposal may include a minimum mandatory past performance requirement.

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Relative Importance

The relative importance of past performance as compared to price or cost and to any other evaluation factor is left to the discretion of acquisition officials. See FAR 15.605(b)(1). However, past performance should be an important enough evaluation factor to ensure that contractors are aware that their *current* performance will be a significant factor in *future* awards. Therefore, OFPP recommends that past performance should normally be at least equal in significance to any other non-cost evaluation factor. Keep in mind that this is not a required benchmark, only a suggested guideline.

For example, suppose a solicitation contains five non-cost evaluation factors including past performance. OFPP suggests any of the following examples as appropriate ways of weighting the evaluation factors:

- (1) Past performance at 25 percent with the other four factors rated at 18.75 percent each ($75 \div 4 = 18.75$).
- (2) Past performance at 25 percent; other factors at 25 percent, 20 percent, 15 percent, and 15 percent.
- (3) All five factors rated at 20 percent.
- (4) One factor at 30 percent; past performance at 30 percent (equal to the highest rated other non-cost factor); other factors at 20 percent, 10 percent, and 10 percent.
- (5) Factor A and Past Performance, the most important evaluation factors, equal in importance; followed by Factor B, Factor C, Factor D, and Factor E, in descending order of importance.

Sections L and M of the RFP

Section L (instructions to offerors) and Section M (evaluation criteria) of the RFP should clearly identify what past performance information the Government will evaluate and how it will be weighted. Past performance information that is not important to the current acquisition need not be included in the RFP.

Section L should state that offerors may identify Federal, state, and local government and

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private contracts that are similar to the statement of work in the solicitation. FAR 15.608(a)(2). If non-Federal work will be rated lower than work for the Federal Government, this needs to be specified in Section M.

Evaluations of contractor performance prepared in accordance with FAR Part 42 are one source of performance information which may be used. FAR 15.608(a)(2). Because FAR 42.1503(e) states that these past performance records shall not be retained for longer than three years after completion of the contract, OFPP recommends that the solicitation should ask the contractor for references for ongoing contracts or contracts completed only within the last three years. Note, however, that a longer period may be appropriate for some contracts, such as construction contracts, where records are maintained for six years. Additionally, for small-dollar contracts, in which there may be many actions and many contractors providing the products or services, a shorter period may be appropriate.

Contractors should not be allowed to provide selective information. To avoid this problem, the solicitation may request either *all* contracts performed by the offeror during the identified period or the last *X* contracts performed within the identified period. The goal is to get an accurate picture of the contractor's recent performance record.

Section L should not ask offerors to describe their past performance history in their proposals. It is usually better to ask for a list of previous contacts and any quality awards earned by the offeror. The RFP should request at least two references from each contract, in order to avoid inflated ratings that would tend to occur if the offeror knew the name of the person providing its rating.

4. Evaluating Past Performance Data

General Indicia of Past Performance

The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each acquisition. FAR 15.608(a)(ii). However, OFPP recommends that a few general areas should be taken into consideration, as appropriate:

(1) Quality of product or service

How well has the contractor complied with contract requirements in the past?
Has the contractor conformed to standards of good workmanship?

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(2) Timeliness of performance

How well has the contractor adhered to contract schedules?

(3) Cost control

Has the contractor typically run at or below the project budget?

Does the contractor submit reasonably priced change proposals?

Has the contractor typically provided current, accurate, and complete billings?

(4) Business practices

How well has the contractor worked with prior contracting officers and technical representatives?

(5) Customer satisfaction

How satisfied with the contractor's product or service are the majority of its ultimate end-users?

(6) Key personnel past performance

What is the performance record of the principal individuals selected to manage and perform key aspects of work on the contract?

Obtaining Information on a Contractor's Past Performance

The most obvious way to obtain past performance information is to examine performance evaluations completed for previous Government contracts. Quality certifications and awards also serve as a useful source of past performance information. The source selection team should also conduct reference checks from past and present customers. For a large, complex project, it may be easiest to establish a team devoted entirely to this task during the source selection, especially if a substantial number of proposals are expected.

The first step in obtaining information through reference checks is to develop a questionnaire, or survey form, reflecting the evaluation rating system that will be used in award. Questions should be carefully worded so that interviewees understand precisely what they are being asked to describe.

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References should be contacted once the questionnaire is prepared. There are various ways to contact the references, including face-to-face interviews, survey mailing, telephone interviews, or some combination of these. OFPP notes that telephone interviews are usually the most practical and cost-effective way to collect past performance information, saving time and effort for both parties.

All evaluation team members should state the questions in the same manner to each interviewee. The simplest way to ensure that this happens is to have the team members state the questions exactly as they appear on the questionnaire.

At least two references should be contacted on each previous contract effort. When more than one individual provides a reference on a particular contract the resulting information is likely to be more candid since anonymity is ensured. While the *results* of the interview may be released to the offeror, FAR 15.610 and 15.1003 prohibit the release of the *names* of persons providing reference information.

Because of the natural tendency for references to give an upward bias to ratings, interviewers should ask enough questions to discriminate between "good" and "excellent" contractors. Even with this natural bias, however, an evaluator should not hesitate, when appropriate, to rate an "excellent plus" -- i.e., exceeds contract requirements or extraordinary commitment to customer satisfaction. These are the contractors with which the Corps wants to do business.

Scoring Past Performance

Once past performance information is gathered, the evaluation team should assign the offeror an overall "performance risk" rating for the project. This final rating may be reflected by a number or other means depending upon what system is being used overall to indicate the relative ranking of the offerors.

Evaluation of past performance is not a precise mechanical process and will include subjective judgment. The final score should be based on consideration of all facts and circumstances, including information obtained from references listed in the proposal, other customers known to the Government, consumer protection organizations, and any others with useful and relevant information. The final score should reflect a determination of the offeror's overall past performance record and commitment to customer satisfaction. Consequently, it will require conclusions of informed judgment by members of the evaluation team. The evaluation team should ensure that it documents the bases for these conclusions.

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Offerors without Past Performance Data

FASA provides that "[i]n the case of an offeror with respect to which there is no information on past contract performance or with respect to which information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance." FASA § 1091(b)(2). This provision has been implemented in the FAR at Part 15.608(a)(2)(iii), which states that "[f]irms lacking relevant past performance history shall receive a neutral evaluation for past performance."

The FAR does not provide a definition for the word "neutral," though it would appear that a *zero* evaluation rating for offerors without past performance data could not be considered "neutral" in light of the FASA language prohibiting an unfavorable rating. OFPP suggests that a neutral evaluation "might be accomplished by giving a new firm the average score of the other competing offerors and evaluating the proposal in accordance with other stated evaluation criteria." OFPP Guide, p. 36. However, this method has not yet been tested in the Federal Courts or before the General Accounting Office.

If a firm is new or new to the specific business area, it is likely that key management and/or technical and scientific personnel proposed for the contract have some relevant experience. Therefore, if a firm claims that it has no relevant past performance data, it could instead provide a list of references where the key personnel worked on similar contracts. An evaluation of the performance of the proposed key personnel on relevant contracts can be used, as appropriate, as all or part of the past performance evaluation.

5. Point of contact for this memorandum is Brian Kennedy at 202-761-8541.



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